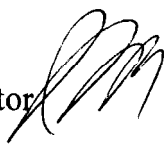


COUNTY OF YORK

MEMORANDUM

DATE: August 12, 2005 (BOS Mtg. 9/20/05)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Application No. UP-676-05, Mid-Atlantic Tower Development, LLC

ISSUE

This application requests a Special Use Permit, pursuant to Section 24.1-306 (Category 17, No. 7) of the York County Zoning Ordinance, to authorize a 198-foot freestanding communications tower with associated ground-mounted equipment within a leased area on a portion of the property of Seaford Baptist Church. The subject parcel is located at 1311 Seaford Road (Route 622) and is further identified as Assessor's Parcel No. 25-311.

DESCRIPTION

- Property Owner: Seaford Baptist Church
- Location: 1311 Seaford Road (Route 622)
- Area: Approximately 4900 sq. ft. of a 16.07 acre parcel (not including access road)
- Frontage: Approximately 815 feet on Seaford Road
- Utilities: Public water and sewer
- Topography: Flat
- 2015 Land Use Map Designation: Low Density Residential
- Zoning Classification: RR – Rural Residential
- Existing Development: Church with parsonage
- Surrounding Development:

North: Single family dwelling along Clark Lane (private road)

East: Single family dwellings along Lewis Drive (Route 628) and one dwelling on Seaford Road

South: Single family dwelling across Seaford Road; Robanna Shores and Chisman Landing subdivisions

West: Two single-family residences and Seaford Elementary School

- Proposed Development: 198' freestanding communications tower with associated ground-mounted equipment

BACKGROUND

In September 2002 the Board approved a Special Use Permit to authorize a 198-foot freestanding communications tower with associated ground mounted equipment within a leased area on a portion of the property of Seaford Baptist Church. However, no further action was taken to begin construction, which would have established the use. Therefore, as stated under Section 24.1-115 (c)(1) of the Zoning Ordinance, "...failure to establish the special use authorized by the permit within two (2) years from the date of approval by the board shall cause the permit to terminate automatically." The only site change from the previous application is the access will no longer be from Walkin Lane or the western side of the Church's parking lot, but will come from the eastern side of the parking area.

CONSIDERATIONS/CONCLUSIONS

1. The proposed tower facility, to be contained within a 4900-square foot lease area, consists of a 198-foot monopole, equipment pads with associated equipment cabinets, an ice bridge connecting the monopole and equipment pad, and a meter board near the entrance to the facility. The facility is to be surrounded by a 7-foot high chain link fence with a 12-foot wide gate at its entrance. A 12-foot wide gravel driveway is proposed connecting the fenced area to the rear of the church parking lot. The driveway is to be located within an ingress/egress easement traversing the northeastern side of the church parking lot and connecting to Seaford Road at the church's eastern entrance. The proposed tower facility would be located to the rear of and approximately 190 feet distant from the existing church building and 648 feet from the edge of pavement of Seaford Road (measured from the boundary of the facility's lease area). The closest dwelling is located approximately 350 feet from the facility. The proposed facility would be located within an area of the parcel that is heavily wooded with a combination of mature evergreen and deciduous trees.
2. Other than the church and parsonage, the proposed lease site is surrounded by single-family dwellings and Seaford Elementary School. The Robanna Shores and Chisman Landing single-family residential subdivisions are located beyond Seaford Road to the south of the church property. The subject parcel and surrounding properties are zoned RR (Rural Residential), with the exception of the elementary school, which is zoned RC (Resource Conservation). The application area and surrounding properties are located within land designated as a Chesapeake Bay Resource Management Area (RMA). The applicant's sketch plan indicates a portion of the church property to the north of the application (lease) area as Resource Protection Area (RPA), associated with a tributary of Chisman Creek. The lease area is shown to be outside of the area designated RPA. The *Comprehensive Plan* designates this area as Low-Density Residential.

3. The previous application indicated that existing PCS service in the Seaford area is currently limited to the Route 17 corridor and west of Goodwin Neck Road. Based on customer demand, expanded coverage is needed for residential areas from Goodwin Neck Road in the west to Dandy and York Point/Cabin Creek in the east and south to the Dare area. Existing structures were considered, such as the monopole at Seaford Fire Station on Back Creek Road; however, no suitable sites were found that would provide required service to the noted areas. The applicant has therefore submitted this request for a new monopole. The applicant's proposed tower would be a co-location site with space for five wireless communications providers.
4. The Federal Aviation Administration (FAA) will analyze the proposed tower to ensure that it will not infringe on air traffic flight patterns. If the FAA requires a permit for the construction of the tower, the applicant will need to provide evidence of FAA approval prior to the County's final approval for construction of the tower. A condition to this effect is included as part of the approving resolution. The proposed tower will not penetrate any of the air space protected by the provisions of the County's Airport Safety Overlay District.
5. As a condition of approval, the applicant will be required to submit a statement from a registered engineer certifying that NIER (nonionizing electromagnetic radiation) emitted from the tower will not result in a ground level exposure at any point outside such facility that exceeds the maximum applicable exposure standards established by any regulatory agency of the U.S. Government or the American National Standards Institute.
6. Although the Telecommunications Act of 1996 did not preempt local zoning authority, localities are somewhat constrained in their ability to deny or delay requests for towers. Such decisions may be enjoined or overturned by the FCC or federal courts if the intent or the effect of the decision is to discriminate between types of communications service providers. They can also be overturned if the decision is not reached within a reasonable period of time, if the denial is unreasonable, or if the denial is based on public health concerns relating to radio frequency emissions. Additionally, the Act places an obligation upon localities to assist the telecommunications providers in finding a facility somewhere within the footprint (coverage area).

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered this application at its August 10th meeting and, subsequent to conducting a public hearing at which the applicant spoke, voted 5:0 (Mr. Barba and Mr. Hamilton absent) to recommend approval.

COUNTY ADMINISTRATOR RECOMMENDATION

Utilities Strategy 3.1 of the Comprehensive Plan discourages location of telecommunications towers in residential neighborhoods "unless there is no other

practical option.” The applicant has indicated that alternative locations with existing support structures were considered in establishing facilities to meet the need for expanded wireless coverage in the Seaford area. However, as there were no existing facilities available that satisfied coverage criteria, a new monopole facility at the proposed location was deemed necessary to meet customer demand for services. In cases where location of such facilities in residential areas is unavoidable, a balance between community aesthetic goals and the wireless industry requirements must be achieved. Utilities Strategy 3.5 further states that such structures “should blend into the surrounding environment when possible.” The proposed tower is to be located in the immediate area of two nonresidential uses, namely, the existing church and elementary school. The tower is proposed in an area of relatively sparse residential development, and the nearest dwelling is located approximately 350 feet from the site. The facility’s obtrusiveness will be reduced somewhat given the location of the facility to the rear of the existing church and within an area that is heavily wooded.

Although such structures may not be appropriate elsewhere in the County’s residential areas, I believe that the particular characteristics of the proposed tower site can afford the opportunity to expand telecommunications coverage without sacrificing aesthetic goals. Therefore, based on the considerations and conclusions as noted, I recommend that the Board approve the application subject to the conditions contained in proposed Resolution No. R05-151.

Carter/3337/EWA

Attachments

- Excerpts of Planning Commission minutes, August 10, 2005
- Zoning Map
- Site Plan (3)
- Photo-simulations of Proposed Tower (3)
- Proposed Resolution No. R05-151